IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 47 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

RAMNIKLAL JIVANLAL KINARIWALA

Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred the

following question of law for opinion of this Court in respect of Assessment Year 1979-80 :-

"Whether on the facts and in the circumstances of the case, the disallowance of interest payment totalling to Rs.39,471/- paid to three trusts, which were partners is not justified u/s. 40(b) of the I.T. Act, 1961 ?"

2. The assessee had paid interest of Rs.39,471/- to trusts which were partners and claimed the allowance in respect thereof. The claim was disallowed by the ITO under Section 40(b) of the Income-tax Act. The CIT(A) following the decision of the Gujarat High Court in the case of CIT vs. Sajjanraj Divanchand, 126 ITR 654 held that interest claimed was not disallowable. The Tribunal in appeal has confirmed the view taken by the CIT(A).

3. We have the learned counsel for the revenue. The learned counsel for the revenue states at the Bar that the controversy raised in the present reference is concluded in favour of the assessee by decision of the Division Bench in Sunil J. Kinariwala vs. CIT, (1995) 211 ITR 127.

4. In view of the principle laid down by the Division Bench of this Court in the above referred to decision, we are of the opinion that the interest claimed was not disallowable under section 40(b) of the Act. The reference is, therefore, answered in favour of the assessee and against the revenue and it stands disposed of accordingly with no order as to costs.

(J.M. Panchal, J.) (M.S. Shah, J.)

sundar/-